Prorogation—Prime ministers must not become kings

FROM HENRY VIII TO STEPHEN HARPER

Although Peter Mansbridge may still have trouble pronouncing it, and many Canadians may not be able to spell it, “prorogation” has become a new word in the political lexicon of virtually all Canadians. For many, “prorogation” may be a new word, even though it refers to a practice dating back to the reign of King Henry VIII, who invented “prorogation” as a way of sending Parliament away without dissolving it.

In modern times, prorogation is used to break up parliaments expected to last three years or more into sessions. Parliament is prorogued when most of a session’s work is done, and there is a recognized need for a seasonal break and for a new session of Parliament to begin after the break, with a Speech from the Throne setting out a new government legislative agenda. The word is unfamiliar to most Canadians and indeed to most citizens in other Westminster parliamentary countries because its normal use is routine and uncontroversial.

The prorogations of the Parliament of Canada in 2008 and 2009 were far from routine. Indeed, it is as if the prime minister returned to the ways of prorogation’s royal inventor and used prorogation to send away a Parliament that had become too pesky. The first came just two weeks after the opening of Parliament following the October 2008 election. The second came over a year into the session but with much of the government’s legislative agenda, including crime bills that the government claimed were urgently needed, still before Parliament. In both cases, Prime Minister Stephen Harper’s aim in advising Governor General Michaëlle Jean to prorogue parliament was to avoid the government’s accountability to Parliament.

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The December 2008 prorogation enabled the Harper government to avoid a scheduled vote of non-confidence, which there was every reason to believe would carry. The 2009 prorogation was to avoid the scrutiny of a House Committee inquiring into the handling of Afghan detainees.

THE CONSTITUTIONAL ISSUES

Under the Canadian Constitution and all of those based on the Westminster model, the power to prorogue Parliament along with the power to summon and dissolve Parliament rests with the Crown. King George VI’s 1947 letters patent made it clear that in Canada the governor general will exercise these Crown powers. Constitutionally, the controversy over prorogation raises the issue of whether the governor general reserves any discretionary power in exercising the power to prorogue Parliament.

In Canada’s system of parliamentary government, as it has evolved over a century and a half, constitutional convention requires that the governor general normally exercise the legal powers vested in the Crown, on the advice of ministers responsible to parliament. However, there is a strong case for arguing that, in certain exceptional circumstances, the Governor General, as the representative of the Crown, must hold in reserve a discretionary power to refuse a prime minister’s advice. The principle governing the use of such a reserve power of the Crown is that its use is necessary to prevent the undermining of responsible parliamentary government.

If the governor general’s role in prorogation is reduced to that of a clerk without any discretion to refuse a prime minister’s “advice,” then we move very close to a system of prime ministerial rather than parliamentary government. A prime minister who can shut down Parliament at any time would be a modern version of an absolute monarch. This would be disturbing even if the prime minister’s party had a majority in the House of Commons. However, when the government lacks a majority in the House of Commons and its licence to govern depends on commanding the confidence of the elected chamber of Parliament, giving the prime minister a blank cheque to close down Parliament would seem incompatible with parliamentary democracy.

SMALL RESERVE OF POWER

Constitutional experts agree that the governor general reserves the power to reject a prime minister’s advice to pro-
It is the height of irresponsibility on the part of our parliamentary leaders to make no concerted attempt to resolve differences over fundamental constitutional conventions of parliamentary democracy.

The global meltdown

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A LARGER DEFICIT THAN ADMITTED

The government projects Canadian real GDP growth to average 3 percent annually for 2011 through 2013, which, on the face of it, seems a reasonable assumption. The Parliamentary Budget Officer, however, has concluded that even this kind of normal growth would leave a significant budget deficit in the fiscal books. One of the most important reasons for these continuing deficits is the reduction in the GST rate from 7 percent to 5 percent in 2007 and 2008. These tax cuts occurred at the peak of the last boom and, of course, have already resulted in significant revenue losses, roughly $10 billion annually.

The Harper government is now wrestling with a structural budget deficit of roughly 1 percent of potential GDP in five years—still low by many global standards. But there will be no budget balance without severe cutbacks in program spending unless taxes are increased—which the Conservatives say they will never do.

GETTING THE PRIORITIES WRONG

After admonishing the other leaders at the G20 and G8 summits to reduce deficits and lower expenses, the Conservative government announced that Canada would spend $9 to $16 billion or more on unneeded new fighter jets. One really wonders what the leaders of the other G20 countries, which in many cases were reducing social expenditures, would think of Canada’s ludicrous expenditure on military aircraft at a time of retrenchment in their economies.

It is an easy prediction that the Conservatives’ budget numbers will be drastically revised over time.